

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3 Case No. 1-09-50026

4 - - - - -x

5 In Re:

6

7 GENERAL MOTORS CORPORATION, et al.,

8

9 Debtors.

10

11 - - - - -x

12

13 United States Bankruptcy Court
14 Southern District of New York
15 One Bowling Green
16 New York, NY 10004

17

18

19 March 6, 2012

20 9:45 AM

21

22 B E F O R E:

23 HON. ROBERT E. GERBER

24 U.S. BANKRUPTCY JUDGE

25

1 Debtors' Objection to Administrative Proof of Claim No. 70908
2 filed by Lorin W. Tate

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Transcribed by: Nick Gereffi

1 A P P E A R A N C E S :

2 WELL, GOTSHAL & MANGERS LLP

3 Counsel for the GUC Trust and

4 General Motors Corporation

5 767 Fifth Avenue

6 New York, New York 10153-0119

7

8 BY: CONRAY TSENG, ESQ.

9

10 Via Telephone

11 LORIN W. TATE

12 Pro Se Litigant

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE COURT: Motors Liquidation. General Motors.

MR. TSENG: Good morning, Your Honor. Conray --

THE COURT: Good morning. Just a minute, please.

Peggy, I can't believe I did this. I think I left the purple folder on the round table in Chambers. I'm sorry. Thank you.

Let me get appearances of both for the GUC Trust for the estate and for the claimant, if he's on the phone or otherwise here.

MR. TSENG: Good morning, Your Honor. Conray Tseng, Weil, Gotshal & Manges on behalf of the GUC Trust and the debtor.

THE COURT: Was that Dunn?

MR. TSENG: Tseng, T-s-e-n-g.

THE COURT: T-s-e -- I'm sorry, Mr. Tseng. Okay.

MR. TSENG: And I believe Mr. Tate is on the line.

THE COURT: Mr. Tate, are you on the phone?

MR. TATE: I am on the line.

THE COURT: I'm sorry. I heard a voice, but it got garbled. Are you on the phone, Mr. Tate?

MR. TATE: Yes, I am.

THE COURT: Okay. Thank you. All right.

Gentleman, I've read the papers, and it does appear to me that there's a threshold issue as to whether I should depart from the words of the contract to make Motors

1 Liquidation have to pay for benefits to anybody other than the
2 successor to General Motors Corporation, which, at least
3 seemingly, would be Motors Liquidation Company.

4 Mr. Tseng, I'll hear your argument first.

5 MR. TSENG: Good morning, Your Honor.

6 The issue before the Court, as you mentioned, is
7 whether or not the contract with Mr. Tate should compensate Mr.
8 Tate for recovery of assets other than to Motors Liquidation
9 Corp. or its predecessor, General Motors Corporation.

10 Based on the terms of the contract -- in this
11 particular Schedule A -- it provides specifically that Mr. Tate
12 would be only compensated for assets where Motors Liquidation
13 Corp. or its predecessor, General Motor Corporation, was the
14 payee. If you examine Mr. Tate's proof of claim, you'll notice
15 that on exhibit -- Attachment 3, excuse me, the vast majority
16 of the line items there are related to entities not known where
17 the payee is listed as Motors Liquidation Corporation or any
18 other DBA listed it.

19 Based on our calculations, only approximately a
20 maximum recovery of \$68,000, seven hundred and twenty -- or
21 \$68,721.58 was identified as listing General Motors
22 Corporation, GMC, or any other DBA of General Motors
23 Corporation. The remainder were listing other entities that
24 either had the name General Motors Corporation but were not
25 General Motors Corporation itself; for example, dealerships or

1 primarily GMAC, General Motors Acceptance Corporation known as
2 Ally --

3 THE COURT: Pause, please, Mr. Tseng.

4 The \$68,000 you just referred to, was that
5 receivables that would generate \$68,000 to Mr. Tate, or was
6 that \$68,000 in money that all GM got?

7 MR. TSENG: That was \$68,000 that was potentially
8 recoverable based on Attachment 3. We do not believe that
9 General Motors received any amounts. However, if he did
10 recover such amounts, it would result in a recovery to Mr. Tate
11 of approximately \$5,497.72 based on an 8 percent commission as
12 set forth in the agreement.

13 We have attempted to identify and locate such amounts
14 receivable to General Motors but have not been able to find any
15 such amounts. We also did attempt to look at the various
16 databases set forth in Mr. Tate's proof of claim, and noticed a
17 number of the assets remain listed there. Nonetheless, the
18 effort and necessity of reconciling all such amounts against
19 Mr. Tate's proof of claim for an amount which could be no more
20 than -- less -- more than \$6,000 would be cost prohibitive to
21 the estate and the GUC Trust itself.

22 THE COURT: Uh-huh. Anything else before I give Mr.
23 Tate a chance to be heard?

24 MR. TSENG: The only other thing we'd like to point
25 out, Your Honor, is that we understand that Mr. Tate was

1 engaged by General Motors Acceptance Corporation, or GMAC, to
2 recover assets, and we believe that was done pursuant to a
3 separate agreement. While we do not have that agreement, we
4 were able to locate an application that Mr. Tate filed with the
5 Northern District of Florida, which was attached to our reply,
6 which makes reference to an attorney of power which sets forth
7 an agreement that specifically references a GMAC Agreement
8 similar to the General Motors agreement. We would believe that
9 any recovery on behalf of GMAC would be governed by that
10 agreement and not our own.

11 I'd also like to point out, Your Honor, that in 2006,
12 General Motors divested its controlling interest of GMAC and
13 therefore would not be authorized or have the ability to direct
14 Mr. Tate to recover assets on behalf of GMAC as it no longer
15 controlled the controlling interest of GMAC.

16 THE COURT: Did you say that was in 2006?

17 MR. TSENG: That was in 2006, Your Honor, and I do
18 believe Mr. Tate's agreement dates back to 2008 or seven.

19 THE COURT: Uh-huh. So that, even if there were
20 some liability for pre-2006 activities, by reason of control of
21 GMAC -- putting aside any statute of limitations -- that would
22 be a pre-petition claim and not an administrative claim.

23 MR. TSENG: That's correct, Your Honor. But -- to
24 point out also, it would be -- the divestiture of GMAC occurred
25 prior to the agreement with Mr. Tate so, therefore, General

1 Motors Corporation itself would not have the ability to
2 authorize Mr. Tate to recover assets on behalf of GMAC as GM
3 did not control GMAC.

4 THE COURT: Okay. Thank you. Mr. Tate, I'll hear
5 from you now, your argument.

6 MR. TATE: Okay.

7 Judge, you'll understand that I'm representing myself
8 now since General Motors has all my money and I can't afford an
9 attorney (indiscernible- 10:11:55), but I did originally
10 contract with General Motors to receive -- to recover assets
11 entitled to every entity of General Motors, including GMAC.

12 I will acknowledge that the sale of GMAC or GMAC
13 shares did affect my contract, but only in the sense that we
14 needed additional documentation from GMAC in order to recover
15 from entities such as the Bankruptcy Court. So General Motors
16 officials transported in a GMAC representative to sign off on
17 each and every document regarding assets for GMAC because,
18 quite frankly, they didn't want to sign off on these documents
19 themselves. I'm literally recovering -- I was responsible for
20 recovering millions of dollars -- I mean, personal response --
21 personal -- I was personally responsible for bringing in more
22 than \$25 million, both before the bankruptcy and after the
23 bankruptcy.

24 I was given instructions by both -- by all parties at
25 General Motors before the filing of bankruptcy and after the

1 filing of bankruptcy. There was never a termination of that
2 contract, never a transfer of that contract to the new General
3 Motors Corporation.

4 THE COURT: Mr. Tate, is there any contract
5 amendment that is not yet before me that substantiates your
6 assertion that the contract covers any entity other than
7 General Motors Corporation, now called Motors Liquidation
8 Company?

9 MR. TATE: No amendments that I'm aware of, but the
10 original contract did, in fact, include all of the entities,
11 including GMAC.

12 THE COURT: Where in the contract does it say that?

13 MR. TATE: Hang on just a second.

14 Well, in services under number one -- I'm looking at
15 the contract that is dated --

16 THE COURT: Thirty, August 2007?

17 MR. TATE: Yes. Yes, correct.

18 In number one, halfway down, "Provider will
19 diligently exercise all necessary efforts to secure the release
20 and recovery of assets for General Motors."

21 GMAC -- while they did divest a portion of GMAC --
22 was still an entity of General Motors. This is backed by
23 conference calls that I had with General Motors at the time.
24 They were a little concerned at their partnership with Cerberus
25 and they didn't want the Cerberus to recovery anything after

1 until they identify the -- entitled to General Motors'
2 interest.

3 THE COURT: Who?

4 MR. TATE: Cerberus is the company for whom General
5 Motors sold off a portion of GMAC to.

6 THE COURT: I'm --

7 MR. TATE: General Motors is finally paying General
8 Motors to retain controlling interest. Cerberus Capital is who
9 they sold a portion of GMAC to.

10 THE COURT: Forgive me, Mr. Tate -- is there any
11 place in this contract where GMAC is mentioned? I could not
12 find it, and I did read the contract in addition to the briefs.
13 I could not see any mention of GMAC.

14 MR. TATE: Well, none of the subsidiaries are
15 specifically mentioned in the contract. All of the interests
16 of General Motors were represented in my contract. You don't
17 see anything for Chevrolet or Cadillac Motors additionally, or
18 GM Warehouse, but I was recovering assets for all of the
19 interests of certain folks.

20 THE COURT: All right. Continue please. You may
21 continue, sir.

22 MR. TATE: I actually -- hang on just a second.

23 If you were to look at some of the recoveries, there
24 are mediated subsidiaries literally all over the place that are
25 not specifically named. I was specifically encouraged by

1 General Motors to seek and recover any assets titled to any
2 General Motors entity. So what we utilized was information on
3 8Ks or 10Ks federal filings to identify all the subsidiaries.
4 I was given authorization to recover assets from any General
5 Motors entity.

6 THE COURT: All right. Anything else?

7 MR. TATE: And, again, none of those subsidiaries
8 are specifically named in the contract itself.

9 Your Honor, I'm seeking discovery for all this
10 (indiscernible- 10:17:57) in e-mail form within General Motors.
11 Most of my communication was after the contract was done over
12 the phone. I've received e-mails from General Motors officials
13 who were obviously talking about my situation and my recovery
14 of these assets for General Motors. There are taped conference
15 calls. All of this information is disclosed on. All can be
16 revealed through discovery.

17 THE COURT: The long pause was me waiting to hear if
18 you had anything further to say, Mr. Tate. Is that it?

19 MR. TATE: Your Honor, may I also add I don't think
20 there's any question that I did the work for General Motors.
21 The only issue at hand is I'm not being compensated for. I've
22 only been compensated for a fraction of the 8 percent that I
23 was to receive on all the assets in my recovery.

24 THE COURT: Mr. Tate, when Mr. Tseng was arguing, he
25 said you had a separate contract with GMAC. Is that so?

1 MR. TATE: I had an additional contract with GMAC,
2 only because I'm willing to do, for instance -- your specific
3 Court is undoubtedly holding assets titled to General Motors,
4 or General Motors entities. What -- in order for me to
5 retrieve the assets from your Court, your specific Court, you
6 would require documentation on authority in order to receive
7 those assets. After the sell-off of portion of GMAC, GM
8 officials that I was dealing with were concerned about Cerberus
9 Capital recovering assets that General Motors felt was entitled
10 to them. So, because the agreement between Cerberus and GMAC,
11 they felt it would be appropriate for an official from GMAC as
12 an entity of General Motors to sign off on the documents for
13 recovery of those specific assets.

14 I could, in turn, present to the Court for the Court
15 to release those assets to General Motors. It doesn't make any
16 difference who was representing, all of the funds were flowing
17 to General Motors.

18 Again, all of this will be backed by information that
19 General Motors has.

20 THE COURT: Okay. Mr. Tate, I've waited about 20 or
21 30 seconds. Have you completed your argument?

22 MR. TATE: Sir, that's about the best I can -- I
23 mean, I'm certainly entitled to a portion of the millions of
24 dollars that I brought in for General Motors.

25 I hope you can help me see this through to discovery

1 so that we can reveal the facts regarding the case.

2 THE COURT: Okay. Mr. Tseng, I'll take reply, if
3 you wish.

4 MR. TSENG: Just one brief point, Your Honor.

5 THE COURT: Keep that mic nice and close to you,
6 please.

7 MR. TSENG: Yes, Your Honor.

8 One brief point, Your Honor; Mr. Tate, by his own
9 admissions, just mentioned that in order to recover assets, he
10 needs to show proper authorization documentation to recover
11 those assets. You'll notice, on the agreement that he signed
12 with General Motors, the only authorization is for General
13 Motors Corporation, as well as Schedule A, General Motors
14 Corporation. In order to submit a claim with respect to any
15 other General Motors entity, Mr. Tate would need an
16 authorization signed by duly authorized individual from the
17 specific General Motors subsidiary or affiliate to authorize
18 that.

19 We would ask that Mr. Tate, at least, if he is going
20 to continue down this path, produce such evidence and
21 information. But, at the end of day, I don't believe that's
22 necessary because, on the face of the contract itself, we are
23 limited to only assets recovered by General Motors Corporation.

24 THE COURT: All right. Have a seat, Mr. Tseng, and
25 you stay on the phone, Mr. Tate. You're going to hear a couple

1 moments of silence.

2 MR. TATE: Okay.

3 THE COURT: Folks, this contested matter between
4 claimant Lorin Tate and the Motors Liquidation Company GUC
5 Trust, which is the successor to Motors Liquidation Company and
6 the new name of the old General Motors Corporation, sometimes
7 referred to as Old GM, arises in the Motors Liquidation Chapter
8 11 case.

9 Mr. Tate has filed an administrative expense claim
10 for \$2.2 million plus interest, and the GUC Trust has objected
11 on several grounds. For the reasons that follow, I need to
12 address only the first of those grounds, which raises a
13 threshold issue, and which results in the claim not being
14 disallowed but at least, seemingly, being allowable in a
15 markedly smaller number.

16 And I find that Mr. Tate's claim should be allowed
17 only to the extent that it arises from assets that he recovered
18 on behalf of General Motors Corporation, now known as Motors
19 Liquidation Company. I do not, today, make a finding regarding
20 the proper amount of Mr. Tate's claim based on the property
21 that General Motors Corporation -- that is, Old GM -- or Motors
22 Liquidation received, and I leave that issue for determination
23 in later proceedings.

24 I, likewise, make no finding as to the extent to
25 which Mr. Tate is entitled to recovery for his services from

1 other entities, most significantly GMAC, which I understand to
2 stand for General Motors Acceptance Corporation, a company that
3 GM -- Old GM divested itself of in 2006.

4 As facts, I find that Mr. Tate signed the recovery
5 agreement with General Motors Corporation on August 30, 2007.
6 The contract provided that Mr. Tate's company, which is called
7 Asset Recovery Services, would act on behalf of General Motors
8 to collect unclaimed property held by various jurisdictions.
9 The recovery agreement stated, with respect to compensation,
10 paragraph 3, "In consideration of the services described above,
11 GM agrees to pay provider" -- which without dispute is Mr. Tate
12 and his company -- "a fee as set forth next to the asset value
13 per each item listed on Schedule A only when such amounts are
14 actually received by GM."

15 GM was defined in the introductory paragraph of the
16 recovery agreement as General Motors Corporation, parens in
17 quotes, "GM," right parens -- right quote, right parens, "A
18 Delaware Corporation." The agreement did not say, in paragraph
19 three, with respect to amounts actually received, that it would
20 also include amounts actually received by subsidiaries,
21 although, using the example that Mr. Tate used in oral argument
22 today -- since, to my understanding, Chevys were made by
23 General Motors Corporation just like Buicks and Pontiacs and
24 other brands then sold by GM, that that would not be a
25 distinction. But GMAC, being a separate corporation, is not

1 GM, and the agreement would have had to have been drafted
2 differently if it were to also cover other companies that were
3 not divisions or products sold by Old GM.

4 Schedule A describes the assets to be recovered by
5 Mr. Tate. He was authorized to collect all unclaimed assets in
6 the name of General Motors Corporation, and he was to receive a
7 fee equal to 8 percent of the amount collected. The recovery
8 agreement was eventually extended to its ultimate expiration
9 date of October 15, 2009.

10 General Motors filed a Chapter 11 case before me on
11 June 1, 2009. Mr. Tate submitted Claim No. 70908 on February
12 12, 2011, along with a statement asserting that his company
13 recovered assets in the amount of \$27.6 million. He also
14 attached spreadsheets listing assets he allegedly recovered
15 from various jurisdictions. Notably, many, if not most, of the
16 individual items Mr. Tate claims he recovered are listed in the
17 name of GMAC, which, as I noted, was divested by GM long before
18 the Chapter 11 case was filed.

19 Old GM initially objected to Mr. Tate's claim on the
20 basis that Old GM had not received any assets as a result of
21 Mr. Tate's efforts. Mr. Tate responded to the objection with a
22 set of interrogatories designed to result in an investigation
23 of Old GM's records of its accounts receivable to determine
24 whether Old GM had, in fact, received assets claimed by Mr.
25 Tate on Old GM's behalf. In its reply, the GUC Trust asked me

1 to focus on what it considered to be a gating or threshold
2 issue, whether the GUC Trust should be required to pay Mr. Tate
3 for property collected on behalf of GMAC or other entities that
4 were different companies than Old GM.

5 Because the language of the contract is unambiguous,
6 I'm compelled to agree with the GUC Trust that Mr. Tate should
7 have a claim only for the amounts recovered on behalf of Old
8 GM, General Motors Corporation, the company named in the
9 contract, as stated in the recovery agreement.

10 Turning now to my conclusions of law; under Section
11 502(a) of the Bankruptcy Code, a claim is deemed allowed unless
12 a party in interest objects. Here, of course, the GUC Trust,
13 on behalf of Old GM, has done that. A claim for administrative
14 expense priority requires that the creditors satisfy two
15 elements: the expense must arise out of a transaction between
16 the creditor and the bank -- Chapter 11 debtors' trustee, or
17 debtor-in-possession, and it can be considered administrative
18 only to the extent that the consideration supporting the
19 claimant's right to payment was both supplied to and beneficial
20 to the debtor-in-possession in the operation of the business.
21 Trustees of Amalgamated Insurance Fund vs. McFarlin's, Inc.,
22 789, F.2d, at page 101; that's a decision of the Second Circuit
23 Court of Appeals in 1986. See also my decision in Applied
24 Theory Corporation, 312 B.R. at page 238, a decision that I
25 issued way back in 2004 citing McFarlin's.

1 Because the GUC Trust asked me to interpret its
2 contract with Mr. Tate, I also need to address basic
3 principles, well-settled principles of contract law. The goal
4 of contract interpretation is to ascertain and, quote, "give
5 effect to the expressed intentions of the parties," period,
6 quote. Hunt Limited vs. Lifschultz Fast Freight, Inc., 889
7 F.2d, at page 1277. That's another decision of the Second
8 Circuit.

9 The expressed intentions of the parties, when a
10 contract is reduced to writing, appear in that writing.
11 Therefore, when a Court like me is trying to ascertain
12 contractual intent, he or she starts with the writing itself.
13 The Second Circuit has also held that if a contract is not
14 ambiguous, then the Court should assign the, quote, "plain and
15 ordinary meaning to each term and interpret the contract
16 without the aid of extrinsic evidence," end quote. See
17 International Multi Foods Corporation vs. Commercial Union
18 Insurance Company, 309 F.3d at page 83. That's another
19 decision of the Second Circuit.

20 Extrinsic evidence means evidence outside the four
21 corners of the contract, such as evidence of things people may
22 have said or events that may have happened.

23 Given the law I have just stated, Mr. Tate's claim
24 can be allowed to a certain extent, but only to that extent.
25 To the extent that he recovered property for General Motors

1 Corporation, the entity named in the contract, of course he's
2 entitled to compensation, barring some circumstances that I
3 don't now have any reason to anticipate. If he recovered
4 property for a division of the corporation, which is still part
5 of the same corporation, he's entitled to that, too. But
6 General Motors Corporation was defined in the agreement. It
7 was a defined term -- that's the way you write contracts. And
8 then the compensation clause, paragraph 3, said in two places
9 that compensation would be available for recoveries only when
10 such amounts are actually received by GM, and indeed, later on,
11 net amounts received by GM.

12 GMAC, to state the most relevant example, is a
13 different company. If there was a separate contract with GMAC,
14 and I sense that there was, it may very well be that Mr. Tate
15 can go after GMAC for that. I take no position on it. I wish
16 him well. Maybe I shouldn't wish him well, but I certainly
17 have no standing to make a ruling on that, but GMAC is a
18 different corporation.

19 Now, Mr. Tate spoke in argument, and also in his
20 papers, about his desire for discovery. With respect to any
21 property that General Motors actually got, if GM wanted to
22 oppose the claim for anything GM got, I would require GM to
23 provide discovery of that character if GM weren't already
24 giving it to him, but GM cannot be obligated to -- even
25 assuming it has the capability -- to provide information with

1 respect to other entities by reason of the threshold issue upon
2 which I just ruled.

3 The GM Trust -- excuse me, the GUC Trust, the
4 successor to Old GM -- has represented that it's under taken
5 sufficient diligence to know that it had not received the great
6 bulk of the property allegedly recovered by Mr. Tate, because
7 on its face, it referred to property that would have been
8 payable to GMAC.

9 If there is still controversy with respect to
10 property that General Motors Corporation actually received,
11 we'll have further proceedings to determine the amount to which
12 Mr. Tate is entitled with respect to that.

13 To summarize -- and Mr. Tate, obviously you have some
14 business experience but, without, in any way, hopefully being
15 patronizing, I want to explain the reasons for my decision.
16 When a contract is unambiguous, as this one is, and when it
17 defines terms in a certain way, you have to live with the
18 unambiguous terms of the contract, and the terms that were
19 defined and the coverage for which the contract provided, and
20 you can't go to what I referred to as extrinsic evidence
21 outside the corners of the contract. On that basis, you have
22 an entitlement for whatever Old GM got, but if any other
23 entities, most significantly GMAC, got it, you have to get
24 whatever you're entitled to from one of them.

25 Mr. Tseng, you are to settle an order in accordance

1 with this ruling that says, in substance, that for the reasons
2 stated on the record, the claim shall be allowed to the extent,
3 but only the extent, to which property that would give rise to
4 commissions was received by General Motors Corporation, a
5 Delaware corporation, thereafter referred to as Old GM and
6 Motors Liquidation Corporation. This order is without
7 prejudice to any rights Mr. Tate might have to recover any
8 entitlement otherwise appropriate under law from any other
9 entity. The Court expresses no views as to his rights with
10 respect to any entity other than General Motors Corporation,
11 thereafter referred to as Motors Liquidation Corporation.

12 Mr. Tate, you have a right to appeal my
13 determination. I do want to bring to your attention that the
14 time to file an appeal is very short when it's a bankruptcy
15 appeal, as compared and contrasted to appeals from orders in
16 other courts. You have 14 calendar days to do that, but the 14
17 days runs from the time of entry of the order, not from the
18 time of this dictated decision. If you provide an e-mail
19 address or a fax address to Mr. Tseng, I will direct him to
20 send you e-mailed notice of that order within 24 hours at the
21 time the order is entered.

22 I'm sorry?

23 MR. TATE: Mr. Tseng already has my e-mail address.

24 THE COURT: Very well. All right. Not by way of
25 re-argument, are there any further matters before us? Mr.

1 Tseng?

2 MR. TSENG: Your Honor, consistent with your
3 decision and your request for the order, we ask that the order
4 specifically set and allow Mr. Tate's proof of claim in the
5 amount of \$5,497.72, which would be the maximum amount of
6 recovery that Mr. Tate would be entitled to should he recover
7 all assets set forth in his proof of claim to General Motors
8 Corporation or any of its divisions or DBAs.

9 THE COURT: Let me make sure I heard you right.

10 In essence, you're saying that you consent to entry
11 of an order that says that he does have an admin claim for that
12 \$5,000-ish number that you just mentioned?

13 MR. TSENG: Yes. That would settle this matter for
14 this --

15 THE COURT: In other words, instead of trying to
16 settle it, you're just prepared to give him the amount that you
17 think he would be appropriately entitled to in the full amount.

18 MR. TSENG: Correct, Your Honor.

19 THE COURT: Okay.

20 Mr. Tate, do you have any objection to that?

21 MR. TATE: I could not hear what he said.

22 THE COURT: Basically, what he did was he asked that
23 I provide an extra paragraph that says that you would have an
24 allowed administrative claim in an amount -- and forgive me,
25 Mr. Tseng, I keep forgetting the amount. It's roughly in the

1 \$5,000 order of magnitude. Could you repeat that?

2 MR. TSENG: Sure, Your Honor. The amount is
3 \$5,497.72, which would be an 8 percent commission on
4 \$68,721.58, or the total amount of recoverable funds set forth
5 on Attachment 3, which lists General Motors Corporation, a
6 division of General Motors Corporation, or any other DBA of
7 General Motors Corporation, as set forth in Mr. Tate's proof of
8 claim.

9 THE COURT: Did you follow that, Mr. Tate?

10 MR. TATE: I, again, could not hear what he was
11 saying.

12 THE COURT: All right. Part of the problem is he
13 was using the microphone at the counsel table.

14 Mr. Tseng, forgive me. Come to the main lectern,
15 pull that microphone very close to you, and basically say again
16 what you just said.

17 MR. TSENG: Yes, Your Honor.

18 We would propose that Mr. Tate have an allowed claim
19 in the amount of \$5,497.72, which reflects an 8 percent
20 commission on \$68,721.58, or the amounts listing forth in
21 Attachment 3 to Mr. Tate's proof of claim, General Motors
22 Corporation, GMC, or any division of General Motors Corporation
23 or any other DBA setting forth in his attachment. Therefore,
24 it would be the maximum amount he would be allowed to have or
25 recover if he were to demonstrate that General Motors

1 Corporation received those funds.

2 THE COURT: And, if I heard you right, you said GMC,
3 not GMAC.

4 MR. TSENG: That is correct. G-M-C.

5 THE COURT: Okay. Mr. Tate, do you want to be heard
6 on his recommendation that I add that paragraph?

7 MR. TATE: Sure. That's a suggestion that they were
8 only paid \$68,000 worth of assets that I have not been
9 compensated on. That's completely incorrect, so I would object
10 to that type of wording's ability to eliminate me from being
11 compensated on what I duly brought in to General Motors on
12 behalf of the company before or after declaring bankruptcy.

13 THE COURT: Well, if you don't want it, I'm not
14 going to make you take it now. I would, if you wanted to, give
15 you that and say it's without prejudice to your rights to
16 appeal if you think you're entitled to more. But, if you don't
17 want it, I'm not going to force you to take it.

18 Your decision, Mr. Tate

19 MR. TATE: I am entitled to more.

20 THE COURT: Well, I understand your position is
21 you're entitled to more, and I understand and will not be
22 insulted if you want to appeal, but I'll give you one more
23 opportunity to take that \$5,400, if you want, without prejudice
24 to your right to appeal. If you choose not to do it, you don't
25 need to.

1 Just tell me whether or not you want that included,
2 Mr. Tate, and I'll give it to you either way.

3 MR. TATE: I don't know my legal options here, Your
4 Honor, other than what you're giving me. I do know, for a
5 fact, that General Motors benefitted from my efforts on their
6 behalf without me being compensated on more than \$68,000.

7 THE COURT: All right. Very well.

8 MR. TATE: I --

9 THE COURT: Under these circumstances --

10 MR. TATE: -- was hoping for fairness in this
11 process.

12 THE COURT: Well, Mr. Tate, whenever people dispute
13 matters before me and I have to make a decision, I do it as
14 fairly as I can based upon my understanding of the law, and
15 after having read the papers with as much care as I possibly
16 can -- and I don't always get it right, but you should know
17 that I tried to get it right, and that I always try to be fair.

18 In any event, Mr. Tseng, given Mr. Tate's response,
19 you are to leave out that paragraph that actually gives him the
20 allowed claim. However, you are to add a paragraph that says,
21 "This order is without prejudice to Mr. Tate's rights to seek
22 and obtain the \$5,400" -- or the exact amount you told me --
23 "at any time he wishes, if he is of a mind to do so. This
24 right is without prejudice to his rights to seek and obtain
25 appellate review of any aspects of the Court's decision with

1 which he disagrees."

2 The legislative history of that extra paragraph,
3 folks, is to help Mr. Tate to protect his rights to appellate
4 review if he wants to do -- get appellate review and, at the
5 same time, to avoid unnecessary litigation before me.

6 And I appreciate that GM was trying to do the right
7 thing. I understand and appreciate Mr. Tate's different
8 perspective, and, as I said, folks, I'm just trying to do my
9 job as best I can.

10 MR. TATE: Your Honor, can I ask a question?

11 THE COURT: Yes, sir. I can't give you legal
12 advice, but I can clarify my ruling, if you need to.

13 MR. TATE: Okay. Is this eliminating the
14 possibility -- the \$68,000 that Mr. Tseng references as by
15 their own calculation? General Motors has literally all of the
16 documentation regarding what they perceived as not received.
17 Does that eliminate my possibility for discovery?

18 THE COURT: If you are talking about discovery from
19 GM, I have to balance your right to discovery with undue
20 burden.

21 Certainly, if you think there is actually anything
22 that Old GM got -- that Motors Liquidation got -- that Old GM
23 hasn't given you credit for, I will look to you and Old GM to
24 work out some kind of method so that you can understand how
25 that amount is determined, and if there's anything that you

1 think that Old GM got that you didn't get credit for, you can
2 bring that to my attention.

3 I am not, however, at least today, going to authorize
4 a free-form expiration of the entirety of Motors Liquidation's
5 records without some kind of focus that would cost, at least
6 seemingly, hundreds of thousands or millions of dollars.

7 If you have a particular receipt that you want Motors
8 Liquidation to trace, that could be a way to skin the cat. I'm
9 not going to micro-manage that process now.

10 Also, I've been told that many, if not most of,
11 Motors Liquidation's Records are no longer in the hands of
12 Motors Liquidation, so we would have to --

13 MR. TATE: So would that change to be at my
14 disadvantage?

15 THE COURT: Well, I understand that, but, with
16 respect, sir, you know -- I've given you a lot of time, and
17 I've tried very, very hard to be courteous, but there are
18 limits to your entitlement as a matter of law, and I am not
19 today going to order Motors Liquidation to turn the company
20 upside down foraging for stuff unless there's some reason to
21 believe it might be in Motors Liquidation's records, and that's
22 my opinion on that supplemental request.

23 All right, folks. We're adjourned.

24 MR. TSENG: Oh, Your Honor, actually --

25 THE COURT: Yes, Mr. Tseng?

1 MR. TSENG: One last clarification request in terms
2 of next steps.

3 General Motors -- or the Motors Liquidation Trust's
4 calculation of the total amount as set forth in Mr. Tate's
5 proof of claim is \$68,721.58. We would welcome Mr. Tate to
6 provide any further accounting, but, in terms of next steps, we
7 would like to find what would be the best procedure to fix and
8 allow Mr. Tate's proof of claim.

9 We would suggest that Mr. Tate produce any other
10 accounting of his own, based on his own attachments and
11 exhibits in his proof of claim, before we move forward with any
12 discovery or any further steps.

13 THE COURT: All right. I'm going to construe that
14 as giving Mr. Tate another opportunity to give Motors
15 Liquidation any substantiation for any additional amounts he
16 thinks that Motors Liquidation got.

17 Mr. Tseng, have you already given him an explanation
18 for how you reached the \$68,000 portion?

19 MR. TSENG: I do believe so. If not, we can happily
20 send him the Excel spreadsheet that sets forth each line item
21 that we've identified and how we came across the \$68,000.

22 THE COURT: Okay.

23 I think each side should provide information at that
24 level of detail to the other side if and to the extent either
25 has not already done so.

1 MR. TSENG: Will do, Your Honor.

2 THE COURT: Okay. We're adjourned.

3 MR. TSENG: Thank you, Your Honor.

4 MR. TATE: Thank you, Your Honor.

5

6 (Whereupon these proceedings were concluded at 10:57 AM)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I N D E X

RULINGS

	Page	Line
Debtors' Objection to Administrative Proof of	20	13
Claim No. 70908- conditional approval		

C E R T I F I C A T I O N

I, Nick Gereffi, certify that the foregoing transcript is a
true and accurate record of the proceedings.

NICK GEREFFI

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: March 7, 2012